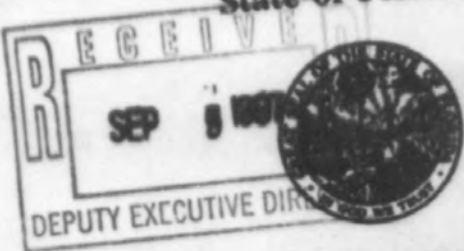


State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-



DATE: September 5, 1997
TO: Dr. Mary Bane, Deputy Executive Director/Technical
FROM: Rosanne Gervasi, Staff Counsel, Division of Legal Services
Lila A. Jaber, Bureau Chief, Water and Wastewater *MSJ*
RE: Docket No. 960576-WS - Application for amendment of Certificates Nos. 340-W and 297-S by Mad Hatter Utility, Inc., in Pasco County. *MSJ*

By this memorandum, we are requesting to modify certain pages of the recommendation filed in the above-referenced docket as Item No. 54-A for the September 9, 1997, agenda conference. Staff inadvertently included in the recommendation an incorrect draft of Attachment A, which is contained on pages 70-86 of the recommendation. To correct this oversight, we are requesting that pages 70-86 of the existing recommendation be replaced with the attached revised pages.

We also request that this modification not result in an automatic deferral of the recommendation because there is an immediate need for service to certain of the parcels of territory at issue. Moreover, the record in this case reflects that duplication of facilities has occurred, and continues to occur within the territory at issue. We believe it prudent for this recommendation to be considered on schedule in order for the Commission to reach a decision as soon as possible on the merits of the utility's application, to minimize the probability of further duplication of existing facilities.

cc: Commissioners Deason, Clark, and Kiesling
Division of Records and Reporting
Division of Water and Wastewater (Brady, Redemann, Messer, J. Williams)
F. Marshall Deterding, Esq.
Marion Hale, Esq.

OK
MMB

DOCUMENT NUMBER-DATE
08976 SEP-85
FPSC-RECORDS/REPORTING

PROPOSED FINDINGS OF FACT

ISSUE 1

1. Mad Hatter Utility, Inc. (Mad Hatter), filed an amendment application to add territory (the extended territory) to its certificate of authorization. That territory includes territory in which Mad Hatter is currently serving without authorization (parcels A-3, A-4, B-21, B-22, B-23, C-6, C-7 and C-8).

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

ISSUE 2

2. The application also included areas in which Mad Hatter seeks to provide service: parcels B-1A (T & G properties); B-20 (Willet); B-24 (Kniff property); B-25 (Ash property); B-26 (Meadowview); B-27 (Como Club/Mossview); C-3A (Twin Lakes commercial parcel); C-9 (Myrtle Lakes Baptist Church); C-10 (Ash property-Myrtle Lake) and the majority of parcel C-8.

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

ISSUE 3

3. There is a need for service in the territory which Mad Hatter seeks to add to its certificate of authorization.

RECOMMENDATION: Reject because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code.

ISSUE 4

4. Mad Hatter does not have the technical ability and adequate capacity to serve the territory which it seeks to add to its certificate of authorization. (R. 631, L. 5-14).

RECOMMENDATION: Reject as argumentative or conclusory.

5. The territory to which Mad Hatter seeks to add to its certificates of authorization will generate somewhere between 436,000 gallons of wastewater a day to 532,500 GPD. (R. 333; L. 18-22; R. 618, L. 9-25; R. 619, L. 1-14).

RECOMMENDATION: ~~Accept~~ Reject as unsupported by the greater weight of the competent and substantial evidence.

6. Mad Hatter only operates one wastewater treatment plant, the Linda Lakes wastewater treatment plant, which is at 100% committed capacity. (R. 125; L. 21-25).

RECOMMENDATION: Accept.

7. Mad Hatter has no other permits from the Florida Department of Environmental Protection (DEP) (R. 75, L. 22-25). It has no permit applications pending with the DEP for any additional wastewater facilities. (R. 76, L. 1-5).

RECOMMENDATION: Accept first sentence, but clarify that MHU has no other wastewater operating permits from the DEP other than for the Linda Lakes wastewater treatment plant. Accept second sentence.

8. Mad Hatter allowed its permit for its Turtle Lakes wastewater treatment facility to expire in April of 1991. (R. 106, L. 22-23). Mad Hatter did not file a timely request with the Florida Department of Environmental Regulation (DER) for an extension for that permit. (R. 106, L. 24-25; R. 107, L. 1).

RECOMMENDATION: ~~Accept~~ conclusory. ~~Reject as argumentative or~~

9. The DER issued a notice of intent to revoke Mad Hatter's permit to operate the Foxwood wastewater treatment plant due to the numerous violations of state pollution regulations and the requirements of the permit. (R. 107, L. 11-19). Mad Hatter later consented to the revocation of its Foxwood wastewater treatment permit. (R. 108, L. 13-15).

RECOMMENDATION: ~~Accept~~ Reject as unsupported by the greater weight of the competent and substantial evidence.

10. It is unlikely that the DEP would allow Mad Hatter to build a rapid rate infiltration basin disposal system in the Land O'Lakes area in light of the numerous plants which have been taken off line due to environmental problems caused by those

disposal systems. (R. 128, L. 5-25). Thus, the DEP anticipates that any future wastewater treatment plants constructed in the area will require considerably more property than the use of rapid rate infiltration basins and will have to either utilize the more expensive slow rate disposal or the very expensive public access process. (R. 128, L. 5-25).

RECOMMENDATION: ~~Accept first sentence.~~ ~~Reject first sentence as argumentative or conclusory.~~ Reject second sentence as unsupported by the record because the record does not support the contention that the utilization of slow rate disposal is more expensive than rapid rate infiltration basin disposal.

11. Mad Hatter does not currently have the capacity to treat the sewage in the extended territory. (R. 67, L. 2-12, 20-25; R. 68, L. 1-7). Mad Hatter has acknowledged that it may take a year and a half of planning or more to provide wastewater treatment service to a development. (R. 70, L. 2-6).

RECOMMENDATION: Reject as argumentative or conclusory.

12. Mad Hatter not only does not have the ability to serve the extended territory, it is not able to provide service in the territory for which it currently has certificates of authorization. (R. 11-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24). Mad Hatter does not have the ability to serve either the Oak Grove subdivision nor the nearby Denham Oaks Elementary School, and it has also been unable to provide service to the Lake Talia area. *Id.*

RECOMMENDATION: Reject as unsupported by the record, and as argumentative or conclusory.

13. Mad Hatter relies upon Pasco County for the treatment of wastewater pursuant to a 1992 agreement between the parties. (R. 84, L. 1-15; R. 85, L. 3-17; Ex. 11). That agreement limits the amount of Mad Hatter's wastewater the County has to treat to 350,000 gallons per day (GPD). (R. 331, L. 19-24). Mad Hatter has exceeded its 350,000 gallon cap with the County. (R. 333, L. 8-15; R. 90, L. 8-21).

RECOMMENDATION: Accept sentence one. Reject sentences two and three as unsupported by the record.

14. The contract between the County and Mad Hatter limits the area to which the County must provide service to Mad Hatter to both

Mad Hatter's PSC certificated area as of February of 1992. It further limits it to the service area described on the map attached as Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11).

RECOMMENDATION: ~~Accept sentence one, but eliminate the word "both," as it appears to be a typographical error. Accept sentence two.~~ **Reject as conclusory.**

15. Most of the extended territory is not described on the map attached to the 1992 agreement. (R. 332, L. 12-19).

RECOMMENDATION: Reject as vague or misleading.

16. Mad Hatter has no viable alternatives for the treatment of the sewage generated by the extended territory. It would cost between \$1.4 and \$1.7 million for Mad Hatter to connect its system to the Pebble Creek treatment plant. (R. 515, L. 3-10).

RECOMMENDATION: Reject first sentence as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. ~~Accept second sentence.~~ **Reject second sentence as conclusory.**

17. It is not cost effective for Mad Hatter to connect to Hillsborough County's system. (R. 432-433). Furthermore, Hillsborough County would not agree to provide service to Mad Hatter unless Pasco County agreed. (R. 432-433).

RECOMMENDATION: Reject first sentence as unsupported by the record. Accept second sentence, but delete the word "furthermore."

18. Mad Hatter has suggested it might send the sewage to Windemere Utility Co. However, the owner, Dr. Bob C. Kratz, Sr., testified that Windemere would not accept any sewage from Mad Hatter for treatment. (R. 288, L. 18-21).

RECOMMENDATION: Reject first sentence because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept second sentence, but delete the word "however," and clarify that Dr. Kratz is the owner of Windemere Utility Co.

19. There is an immediate need for service in the extended territory. (R. 588, L. 2-16). Mad Hatter does not have the present ability to treat and dispose of that sewage to meet

this immediate need. (R. 66, L. 19-25; R. 67, L. 1-12; R. 84, L. 16-25; R. 85, L. 1-17).

RECOMMENDATION: Reject as unsupported by the greater weight of the competent and substantial evidence.

20. The DEP believes that Pasco County is better able to treat sewage in the extended territory. (R. 167, L. 5-9). Mad Hatter's engineer, Edwin Rogers, admitted that Mad Hatter currently has no method of treating sewage generated by the extended territory. (R. 631, L. 11-14).

RECOMMENDATION: ~~Accept sentence one.~~ ~~Reject sentence one as misleading.~~ Reject sentence two as unsupported by the record.

21. Pasco County has a greater ability to provide water to the extended territory. With its current facilities, the County could serve an additional 1,500 connections. (R. 313, L. 22-25; R. 314, L. 1-2). Mad Hatter could provide service to less than 600 new connections. (R. 315, L. 24-25; R. 316, L. 1-4).

RECOMMENDATION: Reject sentence one as argumentative or conclusory and because there is no citation to the record as required by Rule 25-22.056(2)(b), Florida Administrative Code. Accept sentences two and three, but clarify that these findings pertain to water connections.

ISSUE 5

22. Mad Hatter does not have the financial ability to serve the territory which it seeks to add to its certificate of authorization. (R. 86, L. 7-15). Mad Hatter does not have the financial ability to build the facilities to serve the extended territory nor has it applied for any financing to expand its capacity. (R. 86, L. 2-25; R. 87, L. 1-3).

RECOMMENDATION: Reject as argumentative or conclusory.

23. Mad Hatter's accountant, Robert Nixon, acknowledged that he was not certain that Mad Hatter could obtain the financing to serve the extended territory. (R. 196, L. 14-19).

RECOMMENDATION: Reject as unsupported by the record.

24. Although Mad Hatter has contacted its banker, John Cole of Co-Bank, Co-Bank has not provided a commitment to Had Hatter to provide financing. (Exhibit 2).

RECOMMENDATION: Reject as vague or misleading.

25. One reason Mad Hatter has not applied for financing is because it does not know how much it would cost to build a wastewater treatment plant necessary to serve the extended territory. (R. 87, L. 4-18).

RECOMMENDATION: Reject as vague or misleading.

26. According to Mr. DeLucenay, Mad Hatter's financial position was precarious as of January of last year. (R. 88, L. 17-20). Mad Hatter has suffered severe financial difficulties in the past including forcing Barnett Bank to write off over \$700,000.00 presumably because the utility could not repay the loan. (R. 530, L. 15-23). Mad Hatter gave a deed in lieu of foreclosure on a piece of property it owned, and Mr. and Mrs. DeLucenay foreclosed on Mad Hatter so that they could convey real property to a developer, the Van Dorsten Corporation, free and clear of liens on the property. (R. 530, L. 23-25; R. 531, L. 1; R. 582, L. 5-25; R. 583, L. 1-15).

RECOMMENDATION: Accept sentence one. Reject sentences two and three as argumentative or conclusory and as unsupported by the record.

27. Mad Hatter's president, Larry DeLucenay, testified at a preliminary injunction hearing in January of 1996, that without being able to serve the Oak Grove subdivision and the Denham Oaks Elementary School, Mad Hatter faces possible bankruptcy or foreclosure by its lender. (R. 88, L. 25; R. 89, L. 1-7, 18-24).

RECOMMENDATION: Reject as unsupported by the record.

28. Mr. DeLucenay testified at that hearing that Mad Hatter had trouble obtaining financing due to the fact that the County has provided service to the Denham Oaks Elementary School. (R. 89, L. 25, R. 90, L. 1-7).

RECOMMENDATION: Reject as vague and misleading and as unsupported by the record.

29. Mad Hatter faces a possible fine for failing to comply with the PSC order requiring disclosure of the sale of the Foxwood percolation ponds. (R. 531, L. 1-4).

RECOMMENDATION: Reject as unsupported by the record.

30. Mad Hatter has not determined the projected impact of the financing of a new wastewater treatment plant on its capital structure. (R. 206, L. 11-21).

RECOMMENDATION: Reject as unsupported by the record.

31. Mad Hatter is unable to provide information to the Commission on the impact on its rates if the Commission extends the territory for which it has certificates of authorization. (R. 206; L. 22-25; R. 207, L. 1-15).

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

ISSUE 6

32. Mad Hatter owns no real property either by lease or outright ownership on which to build a wastewater treatment plant to serve the extended territory other than a small parcel at its old Foxwood plant where it has no disposal capacity. (R. 76, L. 15-25, R. 77, L. 1-6, R. 78, L. 14-18, 25; R. 79, L. 1-11; R. 80, L. 10-19; R. 621, L. 15-18).

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

33. Mad Hatter has no location to dispose of the sewage in the extended territory. (R. 80, L. 10-19).

RECOMMENDATION: Reject as unsupported by the record.

ISSUE 7

34. Pasco County can and will provide service to the areas that Mad Hatter seeks to add to its certificates of authorization. (R. 334, L. 12-24).

RECOMMENDATION: Reject as argumentative or conclusory.

35. Pasco County has extended water and sewer service along State Road 54 and partially along U.S. 41 to those areas requested by Mad Hatter. (R. 334, L. 12-24). The County plans to run water and sewer lines along U.S. 41 in conjunction with the widening of that road. (R. 334, L. 12-24). Construction of those lines should be completed by June of 1998. (R. 334, L. 12-20).

RECOMMENDATION: Accept first and second sentences. Reject third sentence as speculative.

36. Pasco County has built the Wesley Center wastewater treatment plant and expanded the Land O'Lakes wastewater treatment plant so that the County has the capacity to treat an additional 4,000,000 GPD (R. 334, L. 12-23).

RECOMMENDATION: Accept.

37. The County did not build the lines along U.S. 41 in a race to serve with Mad Hatter. (R. 334, L. 25; R. 335, L. 1-13). Instead, the Florida Department of Transportation (DOT) approached Mad Hatter to enter into an agreement in which Mad Hatter would place lines along U.S. 41. (R. 342, L. 15-25; R. 343, L. 1-17; R. 397, L. 18-25; R. 398, L. 1-13). Only when Mad Hatter refused to do so did the DOT request the County enter into such an agreement. (R. 242, L. 3-6, 13-20; R. 397, L. 18-25; R. 398, L. 1-13).

RECOMMENDATION: Reject as argumentative or conclusory and as unsupported by the record.

38. Pasco County need not devote any of its additional capacity to Mad Hatter as the agreement between the County and Mad Hatter is limited to the geographical areas described on Exhibit 3 to the 1992 agreement. (R. 331; R. 332, L. 1-11; Ex. 11).

RECOMMENDATION: Reject as argumentative or conclusory.

39. The agreement envisioned that Mad Hatter's sewage would be treated at the Land O'Lakes subregional wastewater treatment plant. (R. 425, L. 12-16). The committed capacity at that plant is 1.306 million GPD. (R. 425, L. 1-4). The permitted design capacity is 1 million GPD. (R. 514, L. 20-22).

RECOMMENDATION: Accept sentence one, but clarify that the agreement is the bulk wastewater treatment agreement between MHU and the County. ~~Accept sentences two and three. Reject sentences two and three as unsupported by the greater weight of the competent and substantial evidence.~~

40. The County will not accept any additional wastewater flow from Mad Hatter. (R. 449, L. 13-25; R. 450, L. 1-3).

RECOMMENDATION: ~~Accept. Reject as argumentative or conclusory and as unsupported by the record.~~

ISSUE 8

41. Mad Hatter's proposed amendment to its territory would result in the extension of the system which would be in competition with or a duplication of a portion of Pasco County's system. (R. 633, L. 3-18). Pasco County's system is adequate to meet the reasonable needs of the public. (R. 334, L. 12-24).

RECOMMENDATION: Reject as conclusory and as unsupported by the record.

ISSUE 9

42. Pasco County is able to provide reasonably adequate service to the extended territory. (R. 334, L. 12-24).

RECOMMENDATION: Reject as conclusory and as unsupported by the record.

43. There is no evidence that the County is unable, refusing and neglecting to provide reasonably adequate service. (R. 204, L. 22-25; R. 205, L. 1-8).

RECOMMENDATION: ~~Accept, but change "and" to "or," in order to comport with the language of Section 367.045(5)(a), Florida Statutes, and add "to the extended territory," to the end of the sentence, for clarification.~~ Reject as unsupported by the record.

ISSUE 12

44. Mad Hatter failed to provide any evidence to the Commission regarding the impact of the extension of the utility's monthly rates and service availability charges, if any. (R. 206, L. 11-25; R. 207, L. 1-15). Mr. DeLucenay admitted during the hearing that he did not know the effect of extending the territory on Mad Hatter's capital structure or its rates. (R. 206, L. 11-25; R. 207, L. 1-15.)

RECOMMENDATION: Reject as unsupported by the record and as argumentative or conclusory.

ISSUE 13

45. It is not in the public interest to have Mad Hatter serve the extended territory. (R. 335-337; R. 576-577; R. 581-583). It is not in the public interest to extend the PSC certificate to

a utility which cannot provide service to its current territory. (R. 82, L. 14-22). As noted above, Mad Hatter cannot provide service within its existing territory including the Lake Talia area, the Denham Oaks Elementary School and the Oak Grove subdivision. (R. 1-13; R. 16-18; R. 20-22; R. 32; R. 51, L. 10-24; R. 82, L. 14-22).

RECOMMENDATION: Reject as argumentative or conclusory and as unsupported by the record.

46. The Denham Oaks Elementary School was forced into double sessions so that school children in the fall of 1995 were going to school in the dark. (R. 335, L. 17-25; R. 336, L. 1-8). The County told Mad Hatter to provide service but it was unable to do so because Sunfield Homes, Inc. refused to enter into a contract with Mad Hatter. (R. 336, L. 2-8; R. 461, L. 16-21).

RECOMMENDATION: Reject first sentence as irrelevant. Reject second sentence as unsupported by the record.

47. Pasco County has agreed to provide credit to customers who pay impact fees. (R. 337, L. 2-10). Pasco County issues credits to those customers but Mad Hatter has refused to pass on those savings to the customers despite its agreement with the County to do so. (R. 337, L. 2-10; R. 581, L. 5-8).

RECOMMENDATION: Accept sentence one. Reject sentence two as argumentative or conclusory.

48. The rates charged by Pasco County are less than those charged by Mad Hatter. (R. 337, L. 11-14; Ex. 18).

RECOMMENDATION: ~~Accept~~ Reject as vague and misleading.

49. Mad Hatter failed to notify the Commission of the sale of Foxwood and Turtle Lakes percolation ponds for \$195,000.00 although the PSC had ordered Mad Hatter to notify it if the property was sold because the cost of abandonment had been passed along to the customers. (R. 581, L. 18-25; R. 582, L. 1-11). Mad Hatter agreed to notify the PSC if the plants were sold. (R. 582, L. 7-14). In Re: Application for a Rate Increase in Pasco County by Mad Hatter Utility, Inc., Order PSC-93-0295-FOF-WS at p. 15.

RECOMMENDATION: Reject as argumentative or conclusory, as unsupported by the record, and as irrelevant to the issues of

this case.

50. Mad Hatter then entered into a contract with the Van Dorsten Corporation to sell the land. (R. 582, L. 15-19). The contract was assigned by Mad Hatter to Mr. DeLucenay and his wife who then obtained a first mortgage on the property from Barnett Bank. (R. 582, L. 15-25; R. 583, L. 1). Mr. and Mrs. DeLucenay filed a mortgage foreclosure lawsuit against Mad Hatter and obtained a judgment. (R. 583, L. 2-7).

RECOMMENDATION: Reject as irrelevant to the issues of this case.

51. Mr. and Mrs. DeLucenay then sold the Foxwood and Turtle Lakes property to the Van Dorsten Corporation for \$195,000.00. (R. 583, L. 8-11). Mad Hatter never notified the PSC of this transaction. (R. 583, L. 12-15).

RECOMMENDATION: Reject as irrelevant to the issues of this case.

PROPOSED CONCLUSIONS OF LAW

1. To obtain approval of an extension of its certificates of authorization, Mad Hatter must prove that there is no other utility in the area of the extended territory that is willing and capable of providing reasonably adequate service to the extended territory. Rule 25-30.036(3)(a)-(1).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law, is argumentative, and because Rule 25-30.036(3)(a)-(1), Florida Administrative Code, contains no such legal requirement.

2. Mad Hatter must prove to the Commission that it has the financial and technical ability to provide service in the extended territory. Rule 25-30.036(3)(b).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

3. Mad Hatter must prove it owns the land upon which the utility treatment facilities that will serve the proposed territory are located or provide a copy of an agreement, such as a 99 year lease, which provides for the continued use of the land. Rule 25-30.036(3)(d).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

4. Since Mad Hatter has no current capacity to treat the wastewater from the extended territory, it must provide a written description of the proposed methods for effluent disposal. Rule 25-30.036(3)(g).

RECOMMENDATION: Reject because the proposed conclusion contains a factual conclusion which is unsupported by the record.

5. Mad Hatter must describe the capacity of its existing lines, the capacity of the treatment facilities and the designed capacity of the proposed extension. Rule 25-30.036(3)(j).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

6. Mad Hatter must provide to the Commission the numbers and dates of any permits issued for the proposed system by the Florida Department of Environmental Protection (DEP). Rule 25-30.036(3)(k).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

7. Mad Hatter must provide a proposed method of financing the construction and the projected impact on the utility's capital structure. Rule 25-30.036(3)(l).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

8. Mad Hatter must provide to the Commission a description of the types of customers anticipated to be served by the extension such as single family homes, mobile homes, duplexes, golf course clubhouse, commercial use, etc. Rule 25-30.036(3)(m).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

9. Mad Hatter must provide to the Commission a statement regarding the projected impact of the extension on the utility's monthly rates [and] service availability charges. Rule 25-30.036(3)(n).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

10. Mad Hatter must provide an original and two copies of sample tariff sheets reflecting the additional service area. Rule 25-30.036(3)(o).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

11. Mad Hatter shall provide service to the areas described in its certificates of authorization within a reasonable time. Fla. Stat. Sec. 367.111(1).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

12. The Commission may not extend Mad Hatter's territory if the extension would result in Mad Hatter competing with or duplicating any system or portion thereof unless the Commission first determines that the other system is inadequate to meet the reasonable needs of the public or the person operating the system is unable, refuses or neglects to provide reasonably adequate service. Fla. Stat. Sec. 367.045(5)(a).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

13. If the utility has not provided service to any part of its certificated territory within five years after the date of authorization, the authorization may be reviewed, amended or revoked. Fla. Stat. Sec. 367.111(1).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

14. Pasco County is not regulated by the Commission. Fla. Stat. Sec. 367.022. In re: Petition by Adam Smith Enterprises, Inc. for a Declaratory Statement as to Jurisdictional Status, Docket No. 890159-WS, Order No. 19060 (March 30, 1988).

RECOMMENDATION: Accept.

15. The Commission has no authority to restrain a governmental agency from invading the service area of a private utility certificated by it. Southern Gulf Utilities, Inc. v. Mason,

166 So. 2d 138 (Fla. 1964).

RECOMMENDATION: Accept.

16. The right to provide utility services to the public carries a duty to promptly and efficiently provide those services. City of Mount Dora v. JJ's Mobile Homes, Inc., 579 So. 2d 219 (Fla. 5th DCA 1991).

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

17. The right to provide utility services is conditioned upon the ability of the franchisee to promptly and efficiently meet its duty to provide those services. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

18. When two utilities have the right to serve, the utility with the earliest acquired legal right has the exclusive right to provide the service if it has the present ability to do so. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

19. Utilities which undertake to perform a service to the public have a duty and obligation to render reasonably adequate services to the public. City of Winter Park v. Southern States Utilities, Inc., 540 So. 2d 178 (Fla. 5th DCA 1989).

RECOMMENDATION: Accept.

20. A utility without the present ability to serve cannot prevent a utility with the present ability to serve from serving the public nor does it have any right to demand that it be permitted to serve the public in the future when it is capable of doing so. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

21. Failure to comply with the requirements set forth in Fla. Stat. Sec. 367.041 and Rule 25-30.035 may result in the denial for a certificate to provide utility service. In Re Conrock Utility Company, 90 Fla. Pub. Serv. Comm'n Rep. 537 (Docket

No. 890459-WU, Order No. 22847, April 23, 1990).

RECOMMENDATION: Accept.

22. The failure to show that the utility owns land or has a written lease for the land on which the proposed facility will be located is a material deficiency in the application. Id. Furthermore, a utility's failure to show its financial ability to own and operate a utility is another material deficiency which justifies denial. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

23. If a utility does not have the technical ability to provide the service, that is another material deficiency which justifies denial. Id.

RECOMMENDATION: Reject because the proposed conclusion does not constitute a conclusion of law.

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